

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ASBESTOS PRODUCTS)	MDL DOCKET NO.: MDL 875
LIABILITY LITIGATION (No. VI))	
)	
This Document relates to:)	E.D.P.A. Civil Action No. 2:10-cv-64681
)	2:10-cv-64682
)	2:10-cv-64683
)	
The Estate of ROBERT J. DION by Its)	Transferred from District Court
Special Administrator Christine M. Dion)	Eastern District of Wisconsin

FOSTER WHEELER LLC'S MOTION FOR SUMMARY JUDGMENT

Foster Wheeler, LLC (incorrectly named as "Foster Wheeler Corp"), by its attorneys, Celba, LLC, pursuant to Fed. R. Civ. 56, hereby moves for summary judgment as to all claims asserted against it in this matter. As grounds for its motion, Foster Wheeler states as follows:

There is no evidence that Mr. Dion inhaled asbestos fibers from any Foster Wheeler product. Furthermore, Plaintiff is unable to provide any documentation or testimony that actually places Mr. Dion around any asbestos-containing product provided by Foster Wheeler. Without such documentation or testimony, Plaintiff's allegations that Mr. Dion worked with or around asbestos containing products from Foster Wheeler is purely conjecture.

Foster Wheeler refers the Court to the Memorandum of Law filed in support of this motion, which is adopted and incorporated herein by reference.

There is no genuine issue as to any material fact and Foster Wheeler is entitled to judgment as a matter of law.

WHEREFORE, for the foregoing reasons and those set forth in the memorandum of law filed in support of this motion, Foster Wheeler, LLC respectfully requests that summary judgment be entered in its favor as to all claims asserted against it in this matter. A proposed Order is filed herewith in accordance with Local Rule 7.1

Dated this 22nd day of March, 2011

CELBA, LLC
Attorneys for Foster Wheeler, LLC

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**FOSTER WHEELER LLC’S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Foster Wheeler, LLC (incorrectly named as “Foster Wheeler Corp”), by its attorneys, Celba, LLC, pursuant to Fed. R. Civ. 56, hereby submits this memorandum in support of its Motion for Summary Judgment as to all claims asserted against it in this matter, including all direct claims and cross-claims.

INTRODUCTION AND FACTS

In the Complaint, Plaintiff alleges that, “Robert J. Dion, was employed at Ansul, Inc. (n/k/a Tyco International, Ltd.) in Marinette, Wisconsin beginning on March 3, 1953 until his retirement on April 28, 1989. Robert J. Dion worked as a machine operator in varying capacities during his employment at Ansul, Inc. and was exposed to the Defendants’ asbestos products and inhaled the asbestos dust and fibers resulting from the ordinary and foreseeable use of such asbestos products.” Ansul, Inc. in Marinette, Wisconsin is the only location in the Complaint where Plaintiff alleges asbestos exposure to Mr. Dion. Plaintiff further alleges that as a result of this asbestos exposure, Mr. Dion was diagnosed with mesothelioma and, as a result, died on August 31, 2006.

Plaintiff named Foster Wheeler as one of the defendants in this matter, however, Plaintiff has failed to offer any evidence that Robert J. Dion ever worked with or around an asbestos-containing product mined, manufactured, developed, tested, processed, converted, marketed, packaged, relabeled or distributed by Foster Wheeler while working at Ansul, Inc. as the Complaint alleges. Pursuant to this Court's Scheduling Order entered on August 9, 2010, all discovery was to be completed by December 7, 2010. Since the time for discovery has expired, Plaintiff must have by now exhausted all avenues that would produce evidence to establish the elements essential to her case against Foster Wheeler. Since Plaintiff, however, cannot offer such evidence that Robert J. Dion worked with or around an asbestos-containing product for which Foster Wheeler is liable, an element essential to her claims, Foster Wheeler is entitled to summary judgment on all claims against it in this case.

SUMMARY JUDGMENT STANDARD

Pursuant to *Fed.R.Civ. P. 56(a)*, "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

When moving for summary judgment, a party need only explain the basis for its motion and identify those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Plaintiff bears the burden of making a showing sufficient to establish the existence of an element to her case. *See id.* at 322-23.

Without any evidence that Mr. Dion worked with or around asbestos-containing products mined, manufactured, developed, tested, processed, converted, marketed, packaged, relabeled or distributed by Foster Wheeler as alleged in the Complaint, Plaintiff cannot raise any genuine issue of material fact to counter this summary judgment motion.

CONCLUSION

Without evidence that Foster Wheeler supplied asbestos products that actually caused Robert Dion's alleged asbestos related disease, any assignment of liability for his injuries to Foster Wheeler would be the result of conjecture and speculation. Plaintiff cannot provide any evidence that Robert Dion was exposed to or inhaled a single fiber of asbestos from a product mined, manufactured, developed, tested, processed, converted, marketed, packaged, relabeled or distributed by Foster Wheeler. Therefore, it is the duty of the Court to grant summary judgment to Foster Wheeler on all of plaintiff's claims.

Dated this 22nd day of March

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2011, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record.

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ORDER

AND NOW, this ____ day of _____, 2011, upon consideration of the Motion for Summary Judgment of Foster Wheeler, LLC (incorrectly named as “Foster Wheeler Corp”) (hereinafter, “Foster Wheeler”), any response(s) thereto, and any arguments of counsel, it is hereby ORDERED and DECREED that the motion is hereby GRANTED, and that all claims and cross-claims in this action against Foster Wheeler are hereby dismissed with prejudice.

This ____ day of _____, 2011

BY THE COURT:

Presiding Judge Eduardo C. Robreno